(1)S.B.Criminal Revision Petition No.1173/2007
(Manjeet Singh v. State of Rajasthan)

(2)S.B.Criminal Revision Petition No.947/2007
(Rajendra Singh Sankhla v. State of Rajasthan)

(3)S.B.Criminal Revision Petition No.1041/2007
(Ranjeet Singh & Ors. v. State of Rajasthan)

(4)S.B.Criminal Revision Petition No.869/2007
(Jassunath v. State of Rajasthan)

(5)S.B.Criminal Revision Petition No.795/2007
(Nagarmal v. State of Rajasthan)

(6)S.B.Criminal Revision Petition No.1238/2007
(Bhanwar Singh v. State of Rajasthan)

Date of Order :: 30th November, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.R.Sharma]
Mr. B.S.Rathore]
Mr. R.K.Charan] for the petitioners.
Mr. D.S.Rajvi]
Mr. Sunil Mehta]
Mr. Vishnu Kachhawaha, Public Prosecutor.
Mr. J.S.Chaudhary, Special Public Prosecutor.

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REPORTABLE

To quash the order dated 13.7.2007 passed by learned Additional Sessions Judge, Deedwana framing charges against the petitioners, these six petitions under Section 397 read with 401 Code of Criminal Procedure are preferred.

The facts, requires narration for getting the hang of the cases and the issue of law raised, are that on 27.6.2006 at 07.30 PM, Shri Gopal son of Dhannaram undergoing treatment at Government Bangar

Hospital, Deedwana made a statement that at about 06.30 PM on 27.6.2006 when he was indulged in conversation with Jeewanram in between the shops Pattidhar Boot House and Shiv Furnitures, Godara Market, Deedwana a Specio Bolero Jeep carrying about 10-12 persons including Anandpal Singh and Manjeet Singh arrived at and just on opening the door Anandpal Singh started firing indiscriminately, resulting fire injuries to himself and Jeewanram and also to Pramod, Harphool and Pappu, who were sitting inside Pattidhar Boot House. The firing was made because of old enmity with Jeewanram. On basis of the statements aforesaid a case was registered at Police Station, Deedwana for the offences punishable under Sections 147, 148, 149, 452, 307, 323 IPC and 3/25 and 27 of the Arms Act. During investigation statements of Gopal and Pramod were recorded as per provisions of Section 161 Cr.P.C. and the blood stained clothes of injured persons were recovered. The injured were referred and sent to SMS Hospital, Jaipur for further treatment. Shri Jeewanram and Harphool Jat died during treatment, thus, the offence punishable under Section 302 IPC was added for investigation. After thorough investigation the report as per the provisions of Section 173 Cr.P.C. alongwith documents relating to material collected during investigation was filed and the case was committed for trial. A separate report was filled relating to accused Shri Vallabh and Nagarmal after their arrest.

Learned Additional Sessions Judge by order impugned dated 13.7.2007 framed charges against the accused persons including the petitioners. The details relating to the charges framed against the petitioners are as follows:-

Revision No.	Name of Petitioners	Charges framed
1173/2007	Manjeet Singh	120-B r/w 302, 307, 450, 148 and 118 IPC.
947/2007	Rajendra Singh	120-B r/w 147, 148, 149, 452, 307, 302 and 118 IPC.
1041/2007	Ranjeet Singh, Sahid & Parvej Ahmed	120-B r/w 302, 307, 450, 148 and 118 IPC.
869/2007	Jassunath	212 IPC.
795/2007	Nagarmal	120-B r/w 302, 307, 450, 148 and 118 IPC.
1238/2007	Bhanwar Singh	120-B r/w 302, 307, 450, 148, 118 and 212 IPC.

The argument advanced on behalf of all the petitioners is that learned Additional Sessions Judge framed an erroneous opinion for presuming commission of offences by the petitioners though upon consideration of the record of the case and the documents submitted therewith no sufficient ground was available to proceed against them.

Heard counsel for the parties.

The provisions of Sections 227 and 228 of the Code of Criminal Procedure run as follows:-

> “227.Discharge.--If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.
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> 228.Framing of charge.--(1)If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which--
>
> (a)is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;
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> (b)is exclusively triable by the Court, he shall frame in writing a charge against the accused.
>
> (2)Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he

> pleads guilty of the offence charges or claims to be tried."

It is manifest from perusal of the provisions of Section 227 Cr.P.C. that (1)at the stage of consideration of discharge of accused the Judge shall consider the record of the case and the documents submitted therewith; (2)while making such consideration an opportunity of hearing is to be given to the prosecution as well as to the accused; and (3) if, the Judge finds that no sufficient grounds against accused are available to proceed, he shall discharge him by recording reasons.

The requirement to consider the record of the case and the documents submitted therewith, opportunity of hearing to the prosecution as well as to the accused and to record reasons in most unambiguous terms demands for objective, judicious and substantial examination of record while discharging an accused. A Judge would be justified in making an order of discharge, where he reaches at the conclusion that no offence at all under the law can be made out on the basis of material produced by the prosecution before him or there is no legal evidence to support the accusation. Meaning thereby, that no sufficient ground shall be available to proceed with the trial, if, no commission of offence is shown even by accepting the evidence proposed to be adduced by the prosecution. An

order discharging an accused can be passed if on consideration of the record and the documents submitted therewith it is found that essential ingredients of the offences alleged are absent or that the dispute is purely of civil nature or the evidence proposed to be adduced suffers from patent absurdities.

The Judge after considering the record of the case and hearing the parties as per the provisions of Section 227 Cr.P.C. shall frame the charges after forming an opinion to presume commission of offence by the accused. For forming such opinion the Judge is required to satisfy himself on basis of material available to connect the accused with the incident leading to his prosecution. While doing so the Judge is not supposed to undertake a detailed inquiry but to see sufficiency of the grounds to warrant framing of charge and to proceed with the trial. At this stage, the consideration require to be made is of only the report of the police submitted as per the provisions of Section 173 Cr.P.C. and not otherwise. The Judge must frame a charge where there is some evidence for presuming that the accused has committed an offence. A charge is required to be framed even in the case of strong suspicion or doubt as a benefit of doubt can be extended to the accused only at conclusion of the trial and not while framing the charge.

In the instant matters this Court is to examine the case of every petitioner in light of the parameters referred above.

REVISION NO.1173/07(Manjeet Singh v. State)

While challenging the framing of charge against Manjeet Singh, it is asserted that on the fateful day he was in West Bengal and, thus, the charge against him was erroneously framed. At the threshold the contention advanced deserves to be negatived on the count that the learned Additional Sessions Judge was to consider the record of the case and the documents annexed therewith but not the defence advanced by the accused. The issue of alibi cannot be adjudicated and decided by the Court while framing the charges.

Name of Shri Manjeet Singh is mentioned in the first information report itself and beside that other adequate evidence is also available to get prima facie satisfied to frame charges for the offences under Sections 120-B r/w 302, 307, 450, 148 and 118 IPC against him.

REVISION NO.947/07(Rajendra Singh v. State)

In the police report with regard to Rajendra Singh it is stated that he is having an agricultural

farm at Jagatpura in Jaipur whereon other accused persons viz. Anandpal Singh, Manjeet Singh, Sanjay Pandey, Balveer Banuda, Datar Singh and Shri Vallabh were regularly coming. All the accused persons were planning at the agricultural farm aforesaid to materlise the crime. The prosecution to allege aforesaid, relied upon the statements of Jainarain Jat, Narendra Singh Meena, Badrinarain Jat, Ramniwas Prajapat and Kesaram Meghwal. I have examined the statements of the abovenamed persons recorded under Section 161 Cr.P.C. and found adequate material to prima facie satisfied to form an opinion to prosecute Rajendra Singh for the offences alleged. The little discrepancies in the statements cannot be a reason to discharge accused Rajendra Singh while considering record of the case as per the provisions of Section 227 Cr.P.C. The Court at the time of framing charge is not supposed to examine trustworthyness of the witnesses, if that is not perverse or absurd at all.

REVISION NO.1041/07
(Ranjeet Singh, Sahid & Parvej Ahmed v. State)

In police report, it is stated that Ranjeet Singh is in relation of Anandpal Singh and he provided food materials and other facilities to accused Anandpal Singh, Sanjay Pandey, Balveer Banuda, Datar Singh and Shri Vallabh before commission of offence. He also provided certain informations through mobile

cellular phone to the accused persons and at his instance a motorcycle used in the incident was recovered. To substantiate allegations made against Ranjeet Singh the prosecution also relied upon the statements given by Abdul Gaffar, Abdul Majid, Maniram, Banwari, Rafika Bano etc. I have examined the statements of the aforesaid persons and I am satisfied that sufficient grounds are available to form a prima facie opinion to frame charges under Sections 120-B r/w 147, 148, 149, 452, 307, 302 and 118 IPC.

In the police report involvement of accused Sahid in the incident is shown by connecting him on basis of statements of Ganpat Jat, Ashok Jagu, Ramdeen Jat and on the basis of the recovery of a cellular phone and a motorcycle said to be used in commission of offence. The police report very specifically provides details of calls to connect Sahid with the incident.

Similarly, accused Parvej Ahmed is also connected by the prosecution with the incident on basis of recovery of Motorcycle and a mobile with Sim Card and also on basis of the statements of Abdul Majid, Abdul Gaffar, Anwar Ali, Rafika Bano, Labia Bano, Rameshwar etc. A detail with record of cellular phone said to be used are also given in the police report. On basis of material available on record, it cannot be said that accused Parvej Ahmed by no stretch

of imagination can be said to be absolutely unconnected with the incident. On the basis of the material available on record, I am satisfied that sufficient grounds are available to frame charges against Parvej Ahmed also.

REVISION NO.869/07 (Jassunath v. State)

The allegation of harbouring offender is against accused Jassunath and the prosecution to substantiate the same placed reliance upon the statements of Jethu Singh, Roop Singh, Bagh Singh and Jor Singh. It is true that Jethu Singh in his statements recorded on 30.7.2006 as per the provisions of Section 161 Cr.P.C. nowhere named Jassunath, however, in his statements recorded on 20.9.2006 he has referred Jassunath as a person who assured Anandpal Singh and other accused persons to get them through from the criminal case. While framing charge it shall not be appropriate to examine the fact as to the statements given by Jethu Singh on 20.9.2006 is believable or not. The charge as per provisions of Section 228 Cr.P.C. is required to be framed on basis of police report and the documents submitted therewith. Prima facie, sufficient ground is available to proceed with the trial against Jassunath also.

REVISION NO.795/07(Nagarmal v. State)

Accused Nagarmal was arrested on 24.1.2007, thus, a separate charge sheet was filed after making regular investigation. Accused Nagarmal was charged for the offences under Sections 120-B r/w 302, 307, 450, 148 and 118 IPC. As per police report Nagarmal was not only involved in conspiracy to kill Jeewanram but also assisted in carrying accused Manjeet Singh to Durgapur (West Bengal). In the statements recorded under Sections 161 Cr.P.C. Shri Jethmal son of Shri Rameshwarlal has specifically stated that his uncle Nagarmal Dayma was with Manjeet Singh and a plan to proceed for West Bengal was made by Manjeet Singh with him, thus, prima facie evidence is available to frame charge against Nagarmal also.

REVISION NO.1238/07(Bhanwar Singh v. State)

The charge against accused Bhanwar Singh is for the offences punishable under Sections 120-B r/w 302, 307, 450, 148, 118 and 212 IPC. As per police report Bhanwar Singh provided a harbour to the accused persons at his agricultural farm. To substantiate the allegations against Bhanwar Singh the prosecution relied upon the statements of Mohan Singh Daroga, Hanuman Meghwal, Guman Singh Rajput and Pannaram Jat. From perusal of the statements of all the abovenamed persons it is established that the agricultural farm

where other accused persons were staying is under co-ownership of Bhanwar Singh and Gyan Singh, however, there is nothing on record to show that Bhanwar Singh in any manner was aware about commission of offences by Anandpal Singh and other accused persons. The evidence available on record also nowhere mentions that Bhanwar Singh ever trained accused persons with fire arms or was involved in conspiracy. It is true that at the instance of Bhanwar Singh a place where conspiracy said to take place was verified but from the reading of memo concerned what it appears is that Bhanwar Singh simply said that at that place food was prepared. On basis of the examination of statements of Mohan Singh Daroga, Hanuman Meghwal, Guman Singh Rajput and Pannaram Jat, I do not find any material against Bhanwar Singh on basis of that and even by accepting those his conviction can be procured. Thus, framing of charge for the offences under Sections 120-B r/w 302, 307, 450, 148, 118 and 212 IPC is apparently erroneous.

In view of whatever discussed above, the revision petitions No.1173/2007, 947/2007, 1041/2007, 869/2007 and 795/2007 are having no merit and, thus, are dismissed. The Revision Petition No.1238/2007 preferred by Bhanwar Singh is allowed and the order dated 13.7.2007 passed by learned Additional Sessions Judge, Deedwana to the extent it relates to accused Bhanwar Singh is quashed. Shri Bhanwar Singh for the

reasons given stands discharged from the charges punishable under Sections 120-B r/w 302, 307, 450, 148, 118 and 212 IPC.

(GOVIND MATHUR),J.

Kkm/ps.